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Before the
Federal Communications Commission MAY 20 1997
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 97-91
Table of Allotments,) RM-8854
FM Broadcast Stations)
(Lewisville, Gainesville, Robinson,)
Corsicana, Jacksboro, and)
Mineral Wells, Texas))

To: Chief, Allocations Branch

REPLY COMMENTS OF
JERRY SNYDER AND ASSOCIATES, INC.

Jerry Snyder and Associates, Inc. ("Snyder"), licensee of KYXS, Mineral Wells, Texas, by its attorneys, hereby respectfully submits its Reply Comments in response to the Comments filed by Heftel Broadcasting Corporation ("Heftel") in the above-captioned proceeding. In regard thereto it is stated as follows:

I. **This is not a Comparative Rulemaking Proceeding**

Heftel's comments are based on the assumption that the N.P.R.M.'s citation of *Modification of FM and TV Authorizations to Specify a New Community of License* ("Community of License"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Community Recon.") turned this proceeding into a comparative examination of "other public interest factors" between two new allotment proposals. However, as the Commission made clear in *Community Recon.* at 7096 ¶ 12:

Consistent with longstanding practice applying these residual categories, if the Commission is presented with conflicting options, such as the option of retaining the existing arrangement

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of allotments, it will adopt the proposal which best discharges the Commission's statutory mandate Under those circumstances, it is proper for the Commission to consider whether a proposal would result in shifting of service from an underserved rural area to a well-served urban area

It is true that had Heftel filed this proposal as a counterproposal in *FM Allotments - Mineral Wells*, 7 FCC Rcd 1791 (1992), "other public interest factors" would be a relevant issue, but Heftel did not do so even though such a counterproposal could have been filed at any time after *Community of License* was adopted in 1989.

II. The Heftel Proposal to Allot Channel 300A to Robinson, Texas and Delete Channel 300C1 from Corsicana, Texas Would Not Result in a Preferential Arrangement of Allotments

The entire thrust of Heftel's proposal is that Robinson, Texas (1990, Census population 7,111) is more deserving of the allotment of Channel 300A than Corsicana, Texas (1990 Census population, 22,911) is to retain its only FM allotment, which is a Class C1, and its only competitive service.¹ To support its proposal, Heftel submits data in its Comments which unquestionably proves that Robinson is a community for allotment purposes, but that is not the issue here. The hurdle Heftel must overcome, as set forth in paragraph 4 of the N.P.R.M., is can Heftel meet the Commission criteria set forth in *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd 10352 (1988); *Headland, Alabama and Chattohoocie, Florida*, 10 FCC Rcd 10352 (1995) (jointly "Tuck"). If Heftel cannot meet this test, then the interlinked Lewisville proposal must also fail.

¹Corsicana is also served by KAND(AM).

The facts in this case are markedly similar to the facts detailed in *FM Allocations - Greenfield and Del Rey Oaks, California*, 11 FCC Rcd 12681 (Chief, Allocations Branch (1995)) ("Del Rey Oaks"). Moreover, any discussion of Section 307(b) of the Act requires reference to the Review Board's decision in *Debra D. Carrigan*, 58 RR 2d 96 (Rev. Bd. 1985) ("Carrigan"), which contains an outstanding analysis of the applicability of Section 307(b) to FM proceedings. It is also significant to note that the FCC created the class of C allotments in the first place "for regional channels in the Western states" ²

In its Comments at pp. 5 - 10 and the attachments thereto Heftel supports the conclusion that Robinson is nothing more than a "bedroom community," where those who work in Waco (1990 census population 103,590) reside at night and on weekends. Heftel shows:

- a) The vast majority of Robinson's residents work in Waco (Heftel Attachment 2, p.1.)
- b) Waco and Robinson have a common border "about 4 miles in length." (Heftel Attachment 2, Attachment 5 thereof.)
- c) Robinson does not have its own newspaper or radio stations, but its needs are addressed by Waco radio stations³ and newspapers. (Heftel Attachment 2, p.1).

²*Carrigan* at 105 ¶ 16.

³Heftel does not mention that Waco is served by 11 radio stations (4 AM and 7 FM). See, *Broadcasting & Cable Yearbook 1997*, p. B-455 (See attachment).

d) While Robinson does have a local government, it has no post office, zip code or telephone exchange and no local public transportation.⁴

Thus, it is respectfully submitted that in its comments, Heftel has failed to prove that its proposal would meet the *Tuck* criteria. Moreover, Heftel proposes to downgrade the C1 allotment to Corsicana and the C1 allotment for Mineral Wells in order to allot an A channel to Robinson. This would frustrate the FCC's intent to use Class C channels in the West as a regional allocation (*Carrigan*, supra) in order instead to provide service "in an area which is abundantly well-served." (*Del Rey Oaks* at 12685).

III. Heftel's Alternative Proposal is Violative of 47 CFR § 0.283 (b)(10)

Heftel's alternative proposal is not a counterproposal to its Petition as originally filed, but rather a proposal to use a site restriction to avoid the fact that Heftel's Robinson proposal cannot pass the *Tuck* criteria. This is a blatant attempt to trade a class C1 allotment to Corsicana in order to gain a class C1 allotment to a Dallas suburb. While the FCC has frequently used site restrictions in order to enforce the spacing requirements of Section 73.207 of its rules, Heftel cites no precedent in which the FCC has imposed a site restriction so that the *Tuck* criteria can be sidestepped. As such, Heftel's alternative proposal raises a new and novel question of law and is properly the subject of a petition for rulemaking - cf. 47 CFR § 0.283 (b)(10).

Moreover, this is a tacit admission that since the Robinson proposal cannot meet the *Tuck* criteria, the alternative proposal is Heftel's best hope to obtain its prize of a valuable C1 in a Dallas suburb. It is interesting to note that while Heftel in its Comments submits an

⁴See, *Del Rey Oaks* at 12684.

engineering study as to its three site restriction reference points, nothing contained therein would change the Robinson allotment reference point of latitude 31° 27" 30'; longitude 97° 07" 27', which coordinates were used by Heftel as the basis of its spacing studies in its Petition.

Throughout this proceeding Heftel has not taken the reason why 47 CFR § 73.207 requires a reference point spacing study as a matter to be taken seriously. First using reference points which raised the *Tuck* criteria as an issue, and then using site restriction criteria coordinates to ostensibly meet the *Tuck* criteria, Heftel invites a rule of chaos in FM allotment proceedings as a substitute for the present rule of law.⁵

For the above reasons, it is respectfully submitted that the Heftel proposal for the assignment of channel 300A to Robinson, Texas would not result in a preferential arrangement of allotments and therefore should be denied.⁶

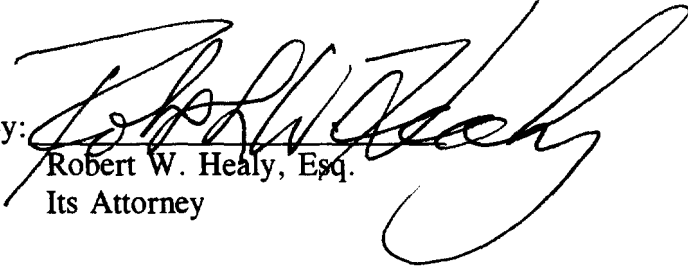
⁵*Reuters Ltd. v. FCC*, 781 F. 2d 946 (D.C. Cir. 1986) ("A precept that lies at the foundation of the modern administrative state is that agencies must abide by their rules and regulations.")

⁶Moreover, the FCC should not consider the late filed counterproposal of Graham Newspapers, Inc. See, *FM Allotments - Farmersville*, DA 96-2110, released January 17, 1997, n. 7.

Respectfully Submitted,

Jerry Snyder and Associates, Inc.

By:


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Its Attorney

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May 20, 1997

Directory of Radio Stations in the U.S.

1947: 1400 khz; 1 kw-U. TL: N28 46 55 W96 58 30. Stereo. Hrs opn: 24. Rebroadcasts WACO-FM 100%. Box 3487 (77901). FAX: (512) 576-6111. Net: ABC/E. Format: Country. Licensee: Uvalde Radio, Inc. Wash atty: & Hochberg. Format: Country. News progms 15 hrs wky. Target aud: 25-54. Farm 12 hrs wky. E. C. Smith, mgr; Zac Gray, progmg dir; Tom Winkle, chief engr.

Waco, TX. WACO-FM (AM)—Sept 9, 1997: 1400 khz; 1 kw-U. TL: N28 46 55 W96 58 30. Stereo. Hrs opn: 24. Rebroadcasts WACO-FM 100%. Box 3487 (77901). FAX: (512) 576-6111. Net: ABC/E. Format: Country. News progms 15 hrs wky. Target aud: 25-54. Farm 12 hrs wky. E. C. Smith, mgr; Zac Gray, progmg dir; Tom Winkle, chief engr.

Vernon

1939: 1490 khz; 1 kw-U. TL: N28 46 55 W96 58 30. Stereo. Hrs opn: 24. Rebroadcasts WACO-FM 100%. Box 3487 (77901). FAX: (512) 576-6111. Net: ABC/E. Format: Country. News progms 15 hrs wky. Target aud: 25-54. Farm 12 hrs wky. E. C. Smith, mgr; Zac Gray, progmg dir; Tom Winkle, chief engr.

1972: 102.3 mhz; 3 kw. Ant 100 ft. TL: N28 46 55 W96 58 30. Stereo. Dups AM 20%. Contemp. MOR.

Victoria

1940: 1340 khz; 1 kw-U. TL: N28 46 55 W96 58 30. Stereo. Hrs opn: 24. Rebroadcasts WACO-FM 100%. Box 3487 (77901). FAX: (512) 576-6111. Net: ABC/E. Format: Country. Licensee: Independence Broadcasting Co. Wash atty: Wendell Mayes Stations Ltd. Rep: McGavren Guild. Wash atty: NewsTalk News. 100 hrs wky. Target aud: 30-64. Bob Woodman, CEO, pres; Charles Seay, news dir; engr.

Waco, TX. WACO-FM (AM)—Apr 8, 1976: 1340 khz; 1 kw-U. TL: N28 46 55 W96 58 30. Stereo. Hrs opn: 24. Rebroadcasts WACO-FM 100%. Box 3487 (77901). FAX: (512) 576-6111. Net: ABC/E. Format: Country. Licensee: Independence Broadcasting Co. Wash atty: Wendell Mayes Stations Ltd. Rep: McGavren Guild. Wash atty: NewsTalk News. 100 hrs wky. Target aud: 30-64. Bob Woodman, CEO, pres; Charles Seay, news dir; engr.

2, 1989: 100.9 mhz; 2.7 kw. Ant 300 ft. TL: N28 46 55 W96 58 30. Stereo. Hrs opn: 24. Rebroadcasts WACO-FM 100%. Box 3487 (77901). FAX: (512) 576-6111. Net: ABC/E. Format: Country. Licensee: Independence Broadcasting Co. Wash atty: Wendell Mayes Stations Ltd. Rep: McGavren Guild. Wash atty: NewsTalk News. 100 hrs wky. Target aud: 30-64. Bob Woodman, CEO, pres; Charles Seay, news dir; engr.

4, 1980: 107.9 mhz; 100 kw. Ant 100 ft. TL: N28 46 55 W96 58 30. Stereo. Hrs opn: 24. Rebroadcasts WACO-FM 100%. Box 3487 (77901). FAX: (512) 576-6111. Net: ABC/E. Format: Country. Licensee: Independence Broadcasting Co. Wash atty: Wendell Mayes Stations Ltd. Rep: McGavren Guild. Wash atty: NewsTalk News. 100 hrs wky. Target aud: 30-64. Bob Woodman, CEO, pres; Charles Seay, news dir; engr.

16, 1948: 1410 khz; 500 w-U. DA-2. TL: N28 46 55 W96 58 30. Stereo. Hrs opn: 24. Rebroadcasts WACO-FM 100%. Box 3487 (77901). FAX: (512) 576-6111. Net: ABC/E. Format: Country. Licensee: Independence Broadcasting Co. Wash atty: Wendell Mayes Stations Ltd. Rep: McGavren Guild. Wash atty: NewsTalk News. 100 hrs wky. Target aud: 30-64. Bob Woodman, CEO, pres; Charles Seay, news dir; engr.

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gen mgr; Peter Hemphill, opns mgr; Jerry Lar-
gen mgr; Wade Fullinsin, chief engr.

Listing follows KAMG.

Dec 1, 1990: 92.3 mhz; 3 kw. Ant 298 ft. TL: N28 46 55 W96 58 30. Stereo. Hrs opn: 24. Suite 208, E. Sabine (77901). (512) 573-9176. FAX: (512) 573-9177. Licensee: Ellis Broadcasting (acq 6-15-92; FTR 7-6-92). Rep: Riley Wash atty: Pepper & Co. Format: Light adult contemp. Target aud: 25-54. John E. Ellis, pres & gen mgr; Bob Price, gen sls mgr; Charles Smith, vp engr.

1995: 90.7 mhz; 30 kw. Ant 328 ft. TL: N28 46 55 W96 58 30. Rebroadcasts KEDT-FM Corpus Christi 100%. Suite 38, 4455 S. Padre Island Dr., Corpus Christi (78411-1690). (512) 855-2213. FAX: (512) 855-2213. Licensee: South Texas Public Broadcasting System Inc. Format: Class, news, jazz. Don Dunlap, gen mgr; Myra Lombardo, dev dir; Anita Herbert, sls dir; Bob Kolna, prom dir; David Srebnik, progmg dir; Cary Gray, chief engr.

Sept 1, 1994: 89.3 mhz; 18.5 kw. Ant 302 ft. TL: N28 46 55 W96 58 20. Stereo. Rebroadcasts KEDT-FM Humble 100%. Box 187, Humble (77347). (512) 575-0833. Licensee: Educational Media Foundation of Victoria. Net: USA. Wash atty: Hardy & Carey. Format: Contemp Christian mus. News staff 2; news progms 5 hrs wky. Target aud: 25-54. Janice Sturkie, gen mgr; Tim McDermott, gen mgr; Bard Letsinger, str mgr; Bob Alcala, prom dir; Jon Hull, Stacy Brooks, progmg dir; Roger Clark, mus dir; Roger Greer, asst mus dir; Tommy Gray, chief engr.

Waco

April 1953: 1010 khz; 10 kw-D, 2.5 kw-N, DA-2. TL: N31 34 09 W97 00 00. 1019 Washington St. (76701). (817) 757-1010. FAX: (817) 752-5339. Licensee: Steve Williams dba American Broadcasting of Waco (acq 6-18-86; FTR 5-12-86). Net: USA. Format: Country. News progms 15 hrs wky. Target aud: 25-54. Steve Williams, pres & gen mgr; Bill Thrasher, opns mgr; James Harris, progmg dir; Don Daunis, gen mgr; Dave Fricker, chief engr.

Aug 1, 1996: 94.5 mhz; 3.2 kw. Ant 453 ft. TL: N31 34 09 W97 00 03. Hrs opn: 24. 4701 W. Waco (76701). Licensee: Kennelwood Broadcasting Co. Format: Jazz. Target aud: 25-54; upper income professionals. Jerry Lenamon, pres. Rates: \$20; 16; 12.

See Hillsboro.

Sept 6, 1959: 95.5 mhz; 100 kw. Ant 1,100 ft. TL: N31 19 17 W97 20 41 (CP: Ant 1,069 ft.). Stereo. Hrs opn: 24. 4949 Franklin Ave. (76710). (817) 776-3917. Licensee: KCKR-FM Inc. Owner: Stellar Communications (\$810,000; FTR 6-14-82). Net: MBS. Rep: Katz. Format: Country. News progms 15 hrs wky. Target aud: 25-54. Don Chaney, CEO, chmn; Ray Eller, gen mgr; Michael Oppenheimer, gen mgr; Dwayne Wells, prom dir & progmg dir; Wendy Hanks, news dir.

July 22, 1922: 1460 khz; 1 kw-U, DA-N. TL: N31 31 01 W97 06 38. Hrs opn: 24. Box 21088 (76701). (817) 772-7100. FAX: (817) 772-8708. Licensee: Gulf Star Communications Inc. Net: ABC/E; Texas State Net. Rep: McGavren Guild. Format: Hit country. News progms 4 hrs wky. Target aud: 25-54; general. Spec prog: Farm 5 hrs wky. Zack Owen, opns mgr; Michael Oppenheimer, natl sls mgr; Rick May, progmg dir; Glenn Michaels, mus dir; Steve Pierce, news dir; David L. Hanks, chief engr.

WACO-FM—Co-owned with KTKK(AM). June 1960: 99.9 mhz; 90 kw. Ant 1,660 ft. TL: N31 20 15 W97 18 37. Stereo. Hrs opn: 24. Dups AM 90%. Net: ABC/I; Texas State Net. News progmg one hr wky. Zack Owen, progmg mgr.

Oct 8, 1962: 1580 khz; 1 kw-D, 500 w-N, DA-2. TL: N31 31 04 W97 05 16. Hrs opn: 18. Box 8093 (76714); 1018 N. Valley Mills Dr. (76710). (817) 772-0930. FAX: (817) 772-1580. Licensee: KRZI Inc. (acq 9-22-86; \$360,000; FTR 9-22-86). Net: Unistar. Rep: Roslin. Wash atty: Leventhal, Senter & Lerman. Format: News/talk. News staff one; news progmg 2 hrs wky. Target aud: 25-54. Spec prog: Black 4 hrs, Sp 14 hrs wky. Van Goodall Jr., pres; Robert Lauck, gen mgr & gen sls mgr; Roland Richter, news dir; Dave Fricker, chief engr.

Mar 15, 1966: 107.1 mhz; 3 kw. Ant 190 ft. TL: N31 31 51 W97 09 10. Stereo. Hrs opn: 7 AM-midnight. Box 97368, Castellaw Communications Ctr., Baylor Univ. (76798). (817) 752-5015; (817) 755-1111, ext 6909. FAX: (817) 755-1563. Licensee: Baylor University. Format: Class, div. Spec prog: Jazz 10 hrs wky. Robert D. Sloan, pres; Frank Fallon, gen mgr; Paul E. Wagenschein, chief engr.

May 1, 1946: 1230 khz; 5 kw-D, 250 w-N, DA-2. TL: N31 31 42 W97 07 14. Hrs opn: 24. Box 2636 (76702). (817) 776-5989. FAX: (817) 751-0097. Licensee: KWTX Broadcasting Co. (group owner). Net: ABC/SMN. Rep: Katz. Format: Oldies. Target aud: 35 plus. Spec prog: Relig 2 hrs wky. Tom Pears, pres; Bob Bunch, gen mgr; Jay Ehret, gen sls mgr; Rick Streed, progmg dir; Bill Moore, chief engr.

Dec 1, 1970: 97.5 mhz; 97 kw. Ant 1,568 ft. TL: N31 19 19 W97 18 58. Stereo. Hrs opn: 24. Prog sep from AM. Format: CHR. Target aud: 18-49. Flash Phillips, progmg dir. KWTX-TV affil.

WACO-FM—Listing follows KTKK(AM).

Waxahachie

June 1955: 1390 khz; 480 w-D, 260 w-N, DA-2. TL: N32 26 45 W96 48 15. Hrs opn: 6 AM-11 PM. 711 Ferris Ave. (75165). (214) 923-1390; (214) 938-1390. FAX: (214) 923-0871. Licensee: Faye and Richard Tuck Inc. Net: Texas State Net. Format: Classic country oldies. News staff 3; news progmg 15 hrs wky. Target aud: 25-54. Spec prog: Farm 3 hrs, Sp 10 hrs, Pol 2 hrs wky. Richard Tuck, pres, gen mgr, sls dir & chief engr; Ken Roberts, str mgr & progmg dir; Barry Wolverton, gen sls mgr & adv mgr; Jim Parmaley, vp mktg; Mark Miller, vp prom. Rates: \$12; 10; 12; 10.

Weatherford

Jan 5, 1986: 89.5 mhz; 368 w. Ant 203 ft. TL: N32 45 06 W97 48 06. Str currently dark. Licensee: Weatherford Educational Broadcasting Foundation (acq 12-88; \$44,000; FTR 12-5-88). Paige Patterson, pres; Carl Singer, gen mgr; Rob Robinson, opns mgr; David Briggs, chief engr.

Aug 12, 1956: 1220 khz; 500 w-D, 8 w-N. TL: N32 47 09 W97 47 55. 203 Eden St. (76086). (817) 594-1220; (817) 596-9000. FAX: (817) 594-9818. Licensee: Granbury Communications (acq 4-1-96; \$117,000). Net: Texas State Net. Format: Big band, country. News staff one; news progmg 12 hrs wky. Target aud: 25-65. Spec prog: Farm one hr, sports 8 hrs, talk 5 hrs wky. Charles Beard, CEO; Chuck Beard, pres; Melinda Beard, Shannon Scoggins, Gary Scoggins, vps; Melinda Beard, gen mgr & prom dir; Shannon Scoggins, sls dir; Tim Gullick, progmg dir; Otis Tomerlin, news dir. WFAA-TV affil.

Wellington

KLRS(AM)—See Memphis.

Weslaco

1926: 1290 khz; 5 kw-U, DA-N. TL: N30 21 38 W97 54 33. Hrs opn: 24. Box 1290, M. Hwy. 83 (78596). (210) 968-7777. Licensee: Ministries of the Valley (acq 1-31-91; FTR 2-11-91). Net: ABC/R. Format: Christian, Sp. News hrs wky. Target aud: 18-34. Enrique Garza, gen mgr. KTJN(FM)—See Mercedes.

West Lake Hills

June 9, 1982: 1560 khz; 2.5 kw. TL: N30 21 38 W97 39 11. Hrs opn: 24. 7524 Austin (78752). (512) 453-1491. FAX: (512) 453-1491. Licensee: Nogales Broadcasting (acq 7-95). Net: Rep: Lotus. Format: Bilingual Tejano. News 14 hrs wky. Target aud: 18-54; bilingual, Hisp & female. Spec prog: Christian mus 6 hrs wky. Garcia, gen mgr; Melissa Garcia, progmg dir.

Wharton

June 17, 1962: 1500 khz; 500 w-U, DA-2. TL: N29 19 22 W96 03 32. Box 350 215 E. (77488). (409) 532-3800. FAX: (409) 532-8555. Licensee: Ammerman Enterprises Inc. (acq 6-1-82; FTR 6-14-82). Net: Texas State Net. Format: Country. Spec prog: Sp 3 hrs, Pol 6 hrs wky. Darrell M. & gen mgr; Sandra Stewart, gen sls mgr, pro news dir; Dave Biondi, chief engr.

Wheeler

Aug 31, 1986: 90.5 mhz; 10 kw. TL: N35 25 57 W100 16 31. Stereo. Box 80 B. 4555 S. Western, Amarillo (79114). (806) 351-1000. FAX: (806) 354-2039. Licensee: Wheeler Educational Broadcasting Foundation. Net: USA. Wash atty: Lohnes & Albertson. Format: Relig, educ. News 9 hrs wky. Target aud: General. Spec prog: Sp 1 hr wky. Ricky Pfeil, pres.

Whitehouse

Aug 15, 1982: 107.3 mhz; 50 kw. TL: N32 17 19 W95 11 56. Stereo. Hrs opn: Brookside Dr., Tyler (75701). (903) 581-0606. F 581-2011. Licensee: GulfStar Communications Inc. Group owner: GulfStar Communications 1996; \$500,000. Rep: Banner. Format: Top-40. Net: 18-44. Don Chaney, pres; Mike Gatons, Todd Tedder, gen sls mgr; Michael Storm, pr progmg dir; Dave Goldman, news dir; Way welder, chief engr.

Wichita Falls

Apr 14, 1963: 99.9 mhz; 100 kw. TL: N33 54 04 W98 32 21. Stereo. Box 5344 4302 Callfield (76307). (817) 691-2311. FAX: (817) 691-2311. Licensee: KLUR Broadcasting Co. Net: Rep: Katz. Format: C&W. Jim Marks, gen mgr; Russell, progmg dir; Frank Seres, mus dir; Hoefner, chief engr.

July 9, 1987: 89.5 mhz; 3 kw. TL: N33 54 04 W98 32 21 (CP: 10 kw). Box 41 Wenonah (76309). (817) 767-3303. FAX: (817) 767-3303. Licensee: Christian Service Foundation

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CERTIFICATE OF SERVICE

I, Angela Y. Powell, a secretary in the law offices of Smithwick & Belendiuk, P.C., certify that on this 20th day of May, 1997, copies of the foregoing were mailed to the following:

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